

EXHIBIT D



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Privileged & Confidential
Via Email

October 25, 2019

Lori K. Bowden
Government Information Specialist
Communications and Outreach
Federal Student Aid
830 First Street NE
Washington, DC 20202

Re: Notice to Submitter Response, FOIA No. 19-02048-F

Dear Ms. Bowden:

We represent Grand Canyon University ("GCU") and write in response to your email dated October 11, 2019, regarding the above-referenced Freedom of Information Act ("FOIA") request. Thank you for the opportunity to respond.

GCU requests that select portions of the documents that the Department of Education intends to produce as responsive to the FOIA request be treated as confidential business information that is exempt from disclosure under Exemption 4 of FOIA. The proposed redactions highlighted in yellow are enclosed. We have also included a table identifying which documents contain redactions, and which documents contain no redactions. The bases for the specific applicable exemptions are described in detail herein.

Justification for Claims of Confidential Treatment

FOIA Exemption 4 protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential" from disclosure in response to a FOIA request. 5 U.S.C. § 552(b)(4). The United States Supreme Court has issued a very recent opinion in *Food Marketing Inst. v. Argus Leader Media, dba Argus Leader*, 139 S. Ct. 2356 (June 24, 2019) ("Argus") that governs this issue. Argus holds that for commercial or financial information to be considered "confidential" within the meaning of Exemption 4, the person imparting the information must at least have actually and customarily treated it as private. *Id.* at 2363. Notably, in doing so, the Supreme Court overturned the D.C. Circuit's decision in *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 766 (D.C. Cir. 1974) ("National Parks"), which adopted a standard requiring a showing of substantial competitive harm for purposes of Exemption 4.

"In the context of Exemption 4, the terms 'commercial' and 'financial' should be given their ordinary meanings." *Id.* (citing *Pub. Citizen Health Res. Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)). A document is "commercial" and protected from disclosure by Exemption 4 "where the [submitting party] has a 'commercial interest' in the information." *Id.* (citing *Pub. Citizen*, 704 F.2d at 1290). Records that reveal basic commercial operations and that reflect proprietary information about a company's business plans and strategies are properly withheld pursuant to Exemption 4. See *Fox News Network, LLC v. U.S. Dep't of The Treasury*, 739 F. Supp. 2d 515, 571 (S.D.N.Y. 2010) (finding that an investment bank presentation was properly withheld pursuant to FOIA Exemption 4 because it contained confidential and proprietary information about business plans, and risk management strategies). Documents that detail a business's operations, contracts, and bids, are trade secrets and protected from FOIA disclosure. *100 Reporters LLC v. U.S. Dep't of Justice*, 248 F. Supp. 3d 115, 136 (D.D.C. 2017). "The content of [FDA] applications may

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be withheld under Exemption 4 where it contains "specific information about safety and effectiveness goals or information "obtained through preliminary trials, [information about] side effects and their magnitude, or [product] manufacturing information or chemical composition and specifications." *ViroPharma Inc. v. Dep't of Health & Human Servs.*, 839 F. Supp. 2d 184, 191 (D.D.C. 2012) (citing *Appleton v. FDA*, 451 F. Supp. 2d 129, 141 n.7 (D.D.C. 2006)). "Information that discusses or analyzes" the content of FDA applications (such as strategies and goals) "is similarly properly withheld." *ViroPharma*, 839 F. Supp. 2d at 191. In addition, records that reflect sensitive financial information, such as pricing information, are exempt from FOIA disclosure. See *McDonnell Douglas Corp. v. U.S. Dep't of the Air Force*, 375 F.3d 1182, 1189 (D.C. Cir. 2004).

The information we propose to be redacted fall into several categories, all of which are sensitive commercial and/or financial information:

- **Business Practices Unique to GCU:** The redacted information describes confidential business and operational practices of GCU and its board of trustees that are unique to GCU and its operations.
- **Key Negotiated Contract Terms:** The redacted information includes contract terms that were negotiated with GCU's service provider and reveal sensitive information about the financial relationships of GCU.
- **Pricing and Payment for Services.** The redacted information includes sensitive pricing information related to the payment of GCU's service provider.
- **Valuation and Appraisal Information:** The redacted information includes highly confidential information related to the appraisal of certain GCU personal and real property and assets.

The redacted information is confidential. As discussed above, under the standard articulated in *Argus*, the threshold question is whether GCU actually and customarily treats the information as private. GCU takes substantial care to ensure that the information proposed to be redacted is kept confidential and not publicly released. GCU is proposing the redactions to protect the information that it has declined to publicly release, in order to protect its confidential business and trade secrets. In short, GCU goes to great lengths to protect the information proposed for redaction, and does not provide this information to the public. In addition, GCU takes great care in keeping unique business practices, contract terms, pricing information, and pricing strategy confidential. Accordingly, GCU does not actually or customarily release the redacted information to the public and it is therefore protected from disclosure by Exemption 4.

Conclusion

The information proposed for redaction is exempt from FOIA disclosure pursuant to Exemption 4. The materials include "trade secrets and commercial or financial information" that is "confidential." GCU respectfully requests that the Department maintain the confidentiality of the redacted information and decline to disclose it to any third party under the FOIA request that triggered your letter or otherwise.

If the Department disagrees with any of GCU's proposed redactions, we expect that GCU will receive notice through the undersigned so that it may seek protection through a court order.

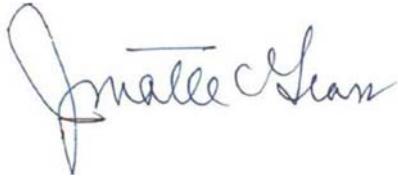
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Please do not hesitate to contact me if you have any questions or would like to discuss this matter further. We appreciate your consideration and attention hereto.

Sincerely,



Jonathon C. Glass

Enclosures

Document Redaction Index

Document	Includes Redactions (Y/N)
_Gazelle - Response to DOE re NFP Conversion 15p.pdf	Yes
05.17.18. ED Request - Cariello and Glass - Request for information	No
2014_Form 990-N - filed 05.03.16 1p	No
2015_Form 990-N - filed 07.11.16 1p	No
2016_Form 990-N - filed 11.08.17 1p	No
2018.08.29 - Gazelle Closing Index 4pp	No
ACTIVE~2	Yes
APA Disclosure Memo (Index of Confidential Schedules) 0829181 pp	Yes
BOD - Barclays Report 042618 42p	Yes
BOD December 6, 2017 2p	Yes
BOD December 16, 2017 2p	Yes
BOD February 21, 2018 2p	Yes
BOD Gazelle PPT Slides - Jan 25 2018 8p	Yes
BOD Gazelle PPT Slides - Jul 27 2017 11p	Yes
BOD Gazelle PPT Slides - Oct 26 2017 8p	Yes
BOD January 25, 2018 11p	Yes
BOD July 27, 2017 3p	Yes
BOD May 12, 2017 1p	Yes
BOD November 21, 2017 2p	Yes
BOD October 26, 2017 3p	Yes
BOT Gazelle PPT Slides - Jan 24 2018 7p	Yes
BOT Gazelle PPT Slides - Jul 26 2017 11p	Yes
BOT Gazelle PPT Slides - Oct 25 2017 8pp	Yes

BOT January 24, 2018 4p	Yes
BOT July 26, 2017 3p	Yes
BOT October 25, 2017 3p	Yes
Cover Letter - ED App Post-Closing 083118 4pp	Yes
Doc A - Summary of Real and Personal Property Appraisals 3p	Yes
Doc B - Supplemental Memo re Deloitte Transfer Pricing Study 021618 1p	No
Doc C - Service Provider Survey Charts (Project Gazelle) 9p	No
Doc D - Barrington Research Associates-2U Inc 21p	No
Doc E - BMO Capital Markets-TWOU 44p	No
Doc F - Robert W. Baird Co. Inc.-2U 51p	No
Doc G - Gazelle - Preliminary Transfer Pricing Analysis 4p	Yes
Doc H - Wells Email with Gazelle Comps-Taxable 1p	Yes
Documentation for e-App 7.2.18 24p	Yes
ED Post Closing Documents 7.10.18 48p	No
Ed Tech Industry - Q4-17 Preview 1.25.18.doc 13p	No
email K Peterson Conflict of Interest Correspondence 1pp	No
Exhibit 2.1(b)-1 Personal Prop 053118 109 pp	Yes
Exhibit A - HLC Letter to Grand Canyon University 1.24.18 40p	Yes
Exhibit B - AZPPSE Approval Letter 042718	No
Exhibit C - GCU 1023 Application 605pp	Yes
Exhibit D - Gazelle University IRS Determination Letter 110915 2p	No
Exhibit E - GCU IRS Nonprofit Affirmation Letter 083118 2p	No
Exhibit F - Maricopa County Property Tax Exemption Notice 072018 10p	No
Feb 16 Email Summary of Information 1p	Yes
Final Purchase Price Adjustment Certificate 083018 22pp	Yes

Foundation - First Amendment to Bylaws - April 2018 - fiscal year 1p	No
Gazelle - All Employee Slides January 5, 2018 86pp	No
Gazelle - August 31 Submission Manifest 2pp	No
Gazelle - First Amendment to Bylaws - April 2018 - ExecCom 1p	No
Gazelle - FOIA Justification Letter 3p	No
Gazelle Comps - Taxable 1p	No
Gazelle December 6, 2017 1p	Yes
Gazelle December 15, 2017 2p	Yes
Gazelle II - Disclosure Schedules to APA (5-18-18) 71pp Confidentially Provided	Yes
Gazelle July 26, 2017 2p	Yes
Gazelle May 12, 2017 1p	Yes
Gazelle November 21, 2017 2pp	Yes
Gazelle October 25, 2017 1p	Yes
Gazelle Transaction Structure 120717 1p	No
Gazelle University - Conflict of Interest Policy - April 2018 5pp	No
Gazelle University - TP Planning Report updated Draft March 5 2018 42p	Yes
Gazelle+GCUF Minutes 062818 6pp	Yes
GCE 6-30-18 Personal Property Valuation Z 1p	Yes
GCE 6-30-18 Personal Property Valuation Z 288pp	Yes
GCE Personal Property Valuation Report 6-30-18 pp 21	Yes
GCU - Financial Statement (7-1-18) 19pp	Yes
GCU - Letter to Management (7-1-18) 4pp	Yes
GCU Employees with Compensation 134p	Yes
Grand Canyon University Foundation - 2014 Form 990EZ 16p	No
Grand Canyon University Foundation - 2015 Form 990EZ 20p	No

Grand Canyon University Foundation - 2016 Form 990EZ 22pp	No
JVI-Gazelle Phase 1 Personal Property Transmittal Letter 011918 7p	Yes
K Peterson Ltr to Pres Barbara GellmanDanley Re GCU Conflict of Int 2-19-18 14pp	No
Moodys Sector Comment Higher Education 021218 7p	No
NFP Model 051818 2p Confidential	Yes
Project Gazelle - Asset Purchase Agreement 051818 84pp	No
Project Gazelle - Credit Agreement 051818 68p	No
Project Gazelle - Master Services Agreement 051818 73p	Yes
Prsnl Propty VAL 103117 1p	Yes
RE Call with G&K + Wells Fargo and BAML on Thurs @ noon ET 10 am MST 2p	Yes
Re Gazelle - Preliminary Transfer Pricing Analysis 4pp	Yes
Real Property Valuation - GCE-Gazelle Phase 1 011918 90pp	Yes
Request 12 1p	Yes
Response to May 17 2018 DOE Letter (May 18 2018) 5pp	Yes
Tab 1 - A. Asset Purchase Agreement 371pp	Yes
Tab 4 - C. Facilities Services Agreement 7pp	Yes
Tab 5 - D. Credit Agreement 87pp	No
Tab 6 - D. Note 2pp	No
Tab 7 - D. Allonge 1 1p	No
Tab 8 - D. Allonge 2 1pp	No
Tab 9 - D. Security and Pledge Agreement 21pp	No
Tab 10 - D. Compliance Certificate of Borrower 2pp	No
Tab 11 - D. Officers Closing Certificate of Borrower 2pp	No
Tab 12 - D. Secretarys Certificate of Borrower 28pp	No
Tab 13 - A. Bill of Sale and Assignment 3pp	No

Tab 14 - B. Assignment and Assumption Agreement 4p	No
Tab 15 - Assignment and Assumption of Equity Interests 5p	No
Tab 16 - Change of Owner Form (Arizona Corporate Commission) 9pp	No
Tab 17 - D. HSR Waiting Period Early Termination 1p	No
Tab 18 - D. Higher Learning Commission 4p	No
Tab 19 - D. AZ State Board for Private Postsecondary Education 1p	No
Tab 20 - E. LoudCloud Amendment No. 1 to Software License Agreem_698847 4pp	No
Tab 21 - E. Acknowledgement and Consent re Golf Course Operating_698848 3pp	No
Tab 22 - E. Assignment of Pono Construction Agreement 2pp	No
Tab 23 - E. Assignment of Sodexho Contract 2p	No
Tab 24 - E. Colangelo Assignment (Employment at GCU) 3p	No
Tab 25 - E. Colangelo Assignment (Transfer of agreements) 2p	Yes
Tab 26 - E. Assignment of PRC Agreement 23p	No
Tab 27 - F. Trademark Assignment 7p	No
Tab 28 - G. Domain Name Assignment 7p	No
Tab 29 - A. Secretarys Certificate of Seller 8p	No
Tab 30 - B. FIRPTA Certificate 2p	No
Tab 35 - D. Seller Resignation Letter - Brian Roberts 1pp	No
Tab 36 - E. Waiver of Potential Conflicts of Interests of Certai_698459_8p	No
Tab 37 - F. Seller Delaware Certificate of Good Standing 1p	No
Tab 38 - A. Secretarys Certificate of Buyer 4p	No
Tab 39 - B. Grand Canyon University, Inc. Articles of Amendment3p	No
Tab 40 - B. Gazelle University Articles of Amendment 1p	No
Tab 41 - B. Trade Name Assignment 1p	No

Tab 45 - D. Buyer Resignation Letter - Will Gonzalez 1p	No
Tab 46 - E. Buyers Delaware Good Standing Certificate 1	No
Tab 47 - A. Special Warranty Deed for Campus Property 38pp	No
Tab 48 - B. Deed of Trust (Credit Agreement) 57pp	No
Tab 49 - C. Closing Statement Regarding Campus Property 4p	No
Tab 50 - D. Lenders Title Insurance Policy (Fidelity) 119pp	No
Tab 51 - E. Owners Title Insurance (Fidelity) 118p	No
Tab 52 - F. Affidavit of Property Value 47pp	No
Tab 53 - G. Owners Affidavit 4p	No
Tab 54 - H. Escrow Instructions to Title Company 7pp	No
Tab 55 - I. Special Warranty Deed (Halama-GCE) 3p	No
Tab 56 - J. Termination of Fixture Lien 1p	No
Tab 57 - A. Second Amendment to Credit Facility 97pp	No
Tab 58 - B. Treasury Account Security and Control Agreement 9p	No
Tab 59 - C. Officers Certificate - BAML Amendment 8p	No
Tab 60 - D. Deed of Release and Full Reconveyance (BofA 2012) 8p	No
Tab 61 - E. Deed of Release and Full Reconveyance (BofA 2016) 2p	No
Tab 62 - F. UCC-3 Termination Statement - La Sonrisa de Siena 1p	No
Tab 63 - G. UCC-3 Termination Statement - Tierra Vista 1p	No
Tab 64 - H. Trademark Release 3p	No